



264183

IN THE CIRCUIT COURT FOR THE EIGHTEENTH JUDICIAL DISTRICT
DUPAGE COUNTY, ILLINOIS, CHANCERY DIVISION

PEOPLE OF THE STATE OF ILLINOIS, ex rel.)
LISA MADIGAN, ATTORNEY GENERAL OF)
THE STATE OF ILLINOIS, and ex rel. JOSEPH)
E. BIRKETT, STATE'S ATTORNEY FOR)
DUPAGE COUNTY,)

Plaintiffs,)

v.)

No. 03 CH 979

PRECISION BRAND PRODUCTS, INC., a)
Delaware corporation, SCOT, INC., an Illinois)
corporation, WILLIAM HELWIG, individually,)
PRINCIPAL MANUFACTURING CORP., an)
Illinois corporation, ARROW GEAR COMPANY,)
an Illinois corporation, and REXNORD, INC., a)
Delaware corporation,)

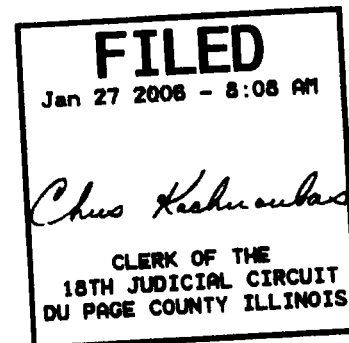
Defendants.)

PRECISION BRAND PRODUCTS, INC.,)

Third-Party Plaintiff,)

v.)

AMES SUPPLY CO., BISON GEAR AND)
ENGINEERING CORP., DOWNERS GROVE)
SANITARY DISTRICT, DYNAGEAR, INC.,)
FUSIBOND PIPING SYSTEMS, INC.,)
LINDY MANUFACTURING, INC.,)
MAGNETROL INTERNATIONAL, INC., THE)
MOREY CORPORATION, RHI HOLDINGS,)
INC., TRICON INDUSTRIES, WHITE LAKE)
BUILDING CORPORATION, CHASE-)
BELMONT PROPERTIES; AMERICAN)
NATIONAL BANK AND TRUST COMPANY)
OF CHICAGO (n/k/a JP MORGAN CHASE)
BANK NA) AS TRUSTEE UNDER TRUST)
NO. 30797; CITIZENS NATIONAL BANK)
OF DOWNERS GROVE (n/k/a U.S. BANK)
NATIONAL ASSOCIATION) AS TRUSTEE)
UNDER TRUST NO. 2398; LASALLE BANK)



NATIONAL ASSOCIATION AS SUCCESSOR)
TRUSTEE UNDER TRUST AGREEMENT)
DATED 10/14/80 AND KNOWN AS TRUST)
NO. 2398, NOW KNOWN AS TRUST NO.)
B7900239830; LOVEJOY, INC., AND)
WISCONSIN AVENUE PROPERTY, L.L.C.,)
)
Third-Party Defendants.)
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WISCONSIN AVENUE PROPERTY, L.L.C.,)
)
Fourth-Party Plaintiff,)
)
v.)
)
2430 WISCONSIN COMPANY, an Illinois general)
partnership, DANIEL STIEHR and DORIS D.)
STIEHR,)
)
Fourth-Party Defendants.)

**WISCONSIN AVENUE PROPERTY, L.L.C.'S
VERIFIED FOURTH-PARTY COMPLAINT**

FOURTH-PARTY PLAINTIFF WISCONSIN AVENUE PROPERTY, L.L.C. ("WAP"),
by its attorneys, WEINBERG RICHMOND LLP, complains of the fourth-party defendants, 2430
WISCONSIN COMPANY, an Illinois general partnership, DANIEL STIEHR ("Daniel Stiehr"),
and DORIS D. STIEHR ("Doris Stiehr"), alleging as follows¹:

Parties

1. WAP is an Illinois limited liability company which holds legal title to certain real
estate commonly known as 2424 Wisconsin Avenue, Downers Grove, Illinois (the "2424
Property"). The 2424 Property is in an industrial park with the name Ellsworth Industrial Park

¹ Pursuant to a number of Orders, including the Order entered on December 14, 2005, the answer or other
response of WAP to any Third Party Complaint filed against it in this action is not due until April 14, 2006.
Therefore, this Fourth-Party Complaint is being filed in accordance with Rule 2-406(b), 735 ILCS 5/2-
406(b), without prior leave of Court.

(the "Ellsworth Industrial Park"). WAP previously acquired the 2424 Property from 2430 Wisconsin Company pursuant to the contract described below.

2. 2430 Wisconsin Avenue Company is or was an Illinois general partnership, the general partners in which included Daniel Stiehr, Doris Stiehr, Robert Diebel and possibly other general partners. On information and belief, Robert Diebel is deceased.

3. 2430 Wisconsin Company was the sole beneficiary of an Illinois land trust known as Chicago Title and Trust Company, as Trustee under Trust No. 1069459 (the "Land Trust"), which held legal title to the 2424 Property and transferred the 2424 Property to WAP pursuant to the contract described below.

Ownership and Operation of the 2424 Property Before Sale to WAP

4. Upon information and belief, the Land Trust acquired the 2424 Property on or before January 1, 1978, and held legal title to the 2424 Property at all times thereafter until June 2, 1997. Upon information and belief, 2430 Wisconsin Company was the sole beneficiary of the Land Trust at all times during which the Land Trust held legal title to the 2424 Property.

5. Commencing on January 1, 1978, and continuing until June 2, 1997, the Land Trust (for the benefit of 2430 Wisconsin Company) leased the 2424 Property to Bison Gear & Engineering Corporation, an Illinois corporation ("Bison"). On information and belief, Bison occupied the 2424 Property continuously from January 1, 1978 until June 2, 1997 and used the 2424 Property for the manufacture of gears, shafts, and aluminum castings for gear and electric motors.

6. In connection with Bison's operations at the 2424 Property, Bison used hazardous substances including 1,1,1-trichloroethane ("1,1,1-TCA"). Bison stored the wastes from its

hazardous substance usage in drums located in a drum storage area on the north side of the building on the 2424 Property.

7. At various times during the period in which Bison occupied the 2424 Property (and during the period in which Daniel Stiehr was a general partner in 2430 Wisconsin Company), Daniel Stiehr was president, a director and (on information and belief) a shareholder of Bison. As such, Daniel Stiehr had personal knowledge of Bison's operations at the 2424 Property during substantial portions, if not all, of the time period in which Bison occupied the 2424 Property.

8. At various times during the period in which Bison occupied the 2424 Property (and during the period in which Daniel Stiehr was a general partner in 2430 Wisconsin Company), Robert Diebel was secretary, a director and (on information and belief) a shareholder of Bison. As such, Robert Diebel had personal knowledge of Bison's operations at the 2424 Property during substantial portions, if not all, of the time period in which Bison occupied the 2424 Property.

Sale of the 2424 Property to WAP

9. On October 10, 1996, Roy Acquisition Corp., as nominee for WAP, entered into a Contract for Sale of Commercial Real Estate (the "Contract") with 2430 Wisconsin Company, pursuant to which 2430 Wisconsin Company agreed to sell and transfer the 2424 Property to Roy Acquisition Corp. as nominee for WAP. Daniel Stiehr executed the Contract as managing partner in 2430 Wisconsin Company. A copy of the Contract is attached hereto as Exhibit A.

10. In Section 7.08 of the Contract, 2430 Wisconsin Company made the following representation and warranty:

In addition, [2430 Wisconsin Company] represents and warrants that the [2424 Property] is now and at all times through the date of Closing shall remain in compliance

with the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Superfund Amendments and Reauthorization Act of 1986, the Federal Water Pollution Control Act and all other federal, state and local laws relating to pollution or protection of the environment, including, without limitation, laws relating to emissions, discharges, releases or threatened releases of industrial, toxic or hazardous substances or wastes or other pollutants, contaminants, petroleum products or chemicals (collectively, "Hazardous Substances") into the environment (including without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances (the "Environmental Laws").

[2430 Wisconsin Company] further represents and warrants that the [2424 Property] is not contaminated with any Hazardous Substances and that . . . (ii) there has been no "release" as defined in 42 U.S.C. 9601(22) or, to the knowledge of [2430 Wisconsin Company], threat of a "release" of any Hazardous Substance on, from or under the [2424 Property];

[2430 Wisconsin Company] further represents and warrants that [2430 Wisconsin Company] has not received any notice that [2430 Wisconsin Company] has any potential liability with respect to the cleanup of any site at which Hazardous Substances have been generated, treated, stored, discharged, emitted or disposed of and there are no past or present or future events, conditions or circumstances which may interfere with or prevent compliance or continued compliance by [2430 Wisconsin Company] in accordance with the Environmental Laws or with any order, decree, judgment, injunction, notice or demand issued, entered, promulgated or approved under the Environmental Laws or which may give rise to any common law or other legal liability, including, without limitation, liability under any Environmental Laws or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, notice of violation, study or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release in the environments (*sic*) Hazardous Substances by [2430 Wisconsin Company] or as a result of any action or omission of [2430 Wisconsin Company].

11. Pursuant to Section 11.04 of the Contract, 2430 Wisconsin Company reaffirmed all of its representations and warranties (including those set forth in Section 7.08 of the Contract as set forth above), as of the date of closing under the Contract.

12. Pursuant to Section 16.03 of the Contract, 2430 Wisconsin Company agreed to indemnify and defend WAP from costs, claims and expenses, including attorneys' fees, arising out of any breach by 2430 Wisconsin Company of the Contract.

13. On May 29, 1997, Ellen Diebel, acting under power of attorney, and Doris Stiehr executed a Resolution of 2430 Wisconsin Company authorizing the sale and transfer of the 2424 Property pursuant to the Contract and including ratification of all actions theretofore taken by Daniel Stiehr on behalf of 2430 Wisconsin Company pursuant to the Contract. On information and belief, Ellen Diebel executed such Resolution as attorney in fact for Robert Diebel, who was then a general partner in 2430 Wisconsin Company.

14. All obligations of 2430 Wisconsin Company, a general partnership, are the personal, joint and several obligations of all general partners in 2430 Wisconsin Company.

15. The closing of the purchase and sale of the 2424 Property pursuant to the Contract occurred on June 2, 1997, at which time the deed from the Land Trust to WAP was recorded with the DuPage County Recorder of Deeds, and WAP paid the purchase price to 2430 Wisconsin Company pursuant to the Contract.

**Special Notice Letter From USEPA;
Hazardous Substances at the 2424 Property**

16. In early January 2005, the United States Environmental Protection Agency ("USEPA") sent a Special Notice Letter dated December 28, 2004 (the "Special Notice Letter") to WAP and to several other parties advising WAP and such other parties that they were potentially responsible parties ("PRP") under the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 *et seq.* ("CERCLA"), with respect to Ellsworth Industrial Park based on alleged releases of hazardous substances at Ellsworth Industrial Park. Specifically, USEPA stated in the Special Notice Letter that USEPA had reason to believe that WAP was an owner/operator of a portion of the Ellsworth Industrial Park or a former owner/operator of the Ellsworth Industrial Park at the time of disposal of hazardous substances at the Ellsworth Industrial Park. A copy of the Special Notice Letter is attached

hereto as Exhibit B. WAP does not admit or concede that it is a PRP with respect to the 2424 Property or Ellsworth Industrial Park or that it is an owner or operator of the 2424 Property or Ellsworth Industrial Park (or any portion thereof) for purposes of CERCLA or any other environmental laws or regulations.

17. Further pursuant to the Special Notice Letter, USEPA notified WAP that WAP was potentially responsible for the costs of certain environmental response actions taken by USEPA with respect to the Ellsworth Industrial Park, including the costs of performance of a remedial investigation/feasibility study ("RI/FS") with respect to the Ellsworth Industrial Park pursuant to CERCLA. WAP does not admit or concede that it is responsible or liable for any of the matters stated or alleged by USEPA in the Special Notice Letter.

18. Bison was one of the other parties who received the Special Notice Letter from USEPA, based in part on its previous operations at the 2424 Property and in part on its previous operations at another site in the Ellsworth Industrial Park.

19. USEPA subsequently provided WAP a copy of a Data Evaluation Summary Report (Revision 1) dated August 1, 2005 (the "Weston Report") prepared by Weston Solutions, Inc. ("Weston") with respect to the Ellsworth Industrial Park. The Weston Report indicated that USEPA had performed subsurface investigation of the 2424 Property and detected 1,1,1-TCA and other chlorinated solvents in soil and groundwater in some of the subsurface testing locations at the 2424 Property.

20. The Weston Report contains the following background information concerning the 2424 Property:

"The [2424 Property] is currently occupied by Flowserve which has been present there for over 4 years. The [2424 Property] was previously occupied by [Bison], a manufacturer of gears, shafts, and aluminum castings used for gear and electric motors. The response to the U.S. EPA 104(e) indicates [Bison] leased the [2424 Property] from

1976 to 1997. The company [Bison] used 1,1,1-TCA (in waste petroleum naphtha) to clean gears and for a cutting process in a closed loop system. In 1986, approximately 2,200 gallons of waste petroleum naphtha was generated. Solvents were stored in drums. Cutting oil was drained from machinery once or twice a year and removed by Beaver Oil. Waste naphtha was disposed of by Safety Kleen. The company [Bison] indicated they stopped using solvents in the late 1980s or early 1990s. A parts washing machine was purchased in 1986 to reduce the amount of waste petroleum naphtha generated. An [Illinois Environmental Protection Agency] inspection in 1991 noted petroleum stained soil at the property adjacent to a drum storage area. Contaminated soil was removed in May 1991 under [Illinois Environmental Protection Agency] oversight. A June 1991 site inspection by the DuPage County Department of Environmental Concerns found the [2424 Property] to be in compliance with applicable environmental regulations.”

21. After WAP’s receipt of the Special Notice Letter, WAP obtained from Bison copies of documents that Bison had previously furnished to USEPA pursuant to Section 104(e) of CERCLA. Those documents included an Open Dump Inspection Report dated April 19, 1991 prepared by the Illinois Environmental Protection Agency ("IEPA") which indicated, among other things, that IEPA observed (i) drums stored north of the building on the 2424 Property, (ii) waste oil storage tanks on the north side of such building, (iii) a sump manhole filled with oil/liquid on the north side of such building and (iv) oil or fuel saturated soils on the north side of such building. A copy of such Open Dump Inspection Report is attached hereto as Exhibit C.

22. Subsequent to the Open Dump Inspection Report, IEPA issued an Administrative Warning Notice dated April 22, 1991 to Bison requiring Bison, among other things, to cease all open dumping at the 2424 Property and remove all wastes to a permitted landfill. A copy of such Administrative Warning Notice is attached hereto as Exhibit D.

23. Bison thereupon conducted cleanup actions at the 2424 Property including removal of certain quantities of contaminated soils to a depth of approximately four feet below ground surface from the area north of the building on the 2424 Property. Bison engaged Testing Service Corporation ("TSC") for such work, and TSC described such work in its letter dated June

7, 1991 to Bison, a copy of which is attached hereto as Exhibit E. Such environmental cleanup work performed by Bison is referred to herein as the "1991 Cleanup Action."

24. USEPA's subsurface testing at the 2424 Property as reflected in the Weston Report identified hazardous substance concentrations in excess of USEPA's screening criteria at depths greater than four feet below ground surface that had been remediated pursuant to the 1991 Cleanup Action.

25. If any hazardous substances are at the 2424 Property as described in the Weston Report, those hazardous substances were present at the 2424 Property at the time of execution of the Contract and at the time of the transfer of the 2424 Property to WAP pursuant to the Contract.

26. Daniel Stiehr was both the managing partner of 2430 Wisconsin Company and president, director and (on information and belief) shareholder of Bison. Robert Diebel was both a general partner of 2430 Wisconsin Company and secretary, director and (on information and belief) shareholder of Bison. Upon information and belief, Daniel Stiehr and Robert Diebel had knowledge, before the execution of the Contract, of the 1991 Cleanup Action. Such knowledge of Daniel Stiehr and Robert Diebel is imputed to 2430 Wisconsin Company, a general partnership in which Daniel Stiehr was the managing general partner, and to all other general partners in 2430 Wisconsin Company.

27. Notwithstanding the knowledge of Daniel Stiehr, Robert Diebel and 2430 Wisconsin Company of the 1991 Cleanup Action, 2430 Wisconsin Company and its general partners did not disclose the 1991 Cleanup Action to WAP or its nominee in the Contract or otherwise before WAP entered into the Contract or acquired the 2424 Property pursuant to the Contract.

28. Upon information and belief, 2430 Wisconsin Company, Daniel Stiehr and Robert Diebel intentionally omitted to disclose the 1991 Cleanup Action to WAP or its nominee during the course of the parties' pre-contract negotiations, with the intention that WAP would rely upon such omission as part of its pre-contract negotiations and ultimate decision to acquire the 2424 Property.

29. At all times relevant to the parties' pre-contract negotiations, WAP did in fact rely upon the omission of 2430 Wisconsin Company to disclose the 1991 Cleanup Action in concluding its negotiations and acquiring the 2424 Property. WAP had no knowledge of the 1991 Cleanup Action until WAP received documents from Bison following WAP's receipt of the Special Notice Letter in 2005.

30. WAP has, pursuant to letters dated March 4, 2005 and April 26, 2005, notified Daniel Stiehr and Doris Stiehr (as general partners in 2430 Wisconsin Company) of the Special Notice Letter and has requested that 2430 Wisconsin Company and its general partners including Daniel Stiehr and Doris Stiehr (i) take responsibility for responding to claims by USEPA and any other parties arising from the environmental conditions at the 2424 Property and (ii) indemnify and defend WAP from all costs, expenses and liabilities arising therefrom. Daniel Stiehr and Doris Stiehr have failed to provide any response to such letters from WAP.

The State of Illinois Proceeding

31. In 2003 the State of Illinois (the "State") commenced a proceeding in 2003 against Precision Brand Products, Inc. and other parties, which proceeding is pending in Circuit Court of DuPage County, Illinois as *State of Illinois v. Precision Brand Products, Inc. et al.*, Case No. 03 CH 979 (the "State of Illinois Proceeding"). Pursuant to the State of Illinois Proceeding, the State seeks, among other things, recovery from the defendants of environmental

response costs incurred by the State in connection with the environmental conditions in and in the vicinity of Ellsworth Industrial Park.

32. Some of the defendants in the State of Illinois Proceeding have filed third party complaints in the State of Illinois Proceeding against WAP and other third party defendants for contribution, under the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/2 *et seq.* (the “Contribution Act”), to any liability they have to the State.

33. The third party defendants in the State of Illinois Proceeding have filed, or are likely to file, counterclaims and cross-claims against the other third party defendants in the State of Illinois Proceeding, including WAP.

COUNT I
(Breach of Representations and Warranties in Contract)

34. WAP realleges each and every allegation pled in paragraphs 1 through 33 as paragraph 34 of this Count I.

35. If the 1991 Cleanup Action was required by IEPA because of hazardous substance releases on the 2424 Property, then those releases occurred before the execution of the Contract on October 10, 1996, and in such case the failure of 2430 Wisconsin Company to have disclosed such releases in the Contract constituted a material breach of the representations and warranties by 2430 Wisconsin Company in Sections 7.08 and 11.04 of the Contract.

36. If the hazardous substances identified in the Weston Report (or in any subsequent investigation by USEPA or any other party) were released on the 2424 Property, such releases occurred before WAP acquired the 2424 Property from 2430 Wisconsin Company pursuant to the Contract, and in such case the failure of 2430 Wisconsin Company to have disclosed such releases in the Contract constituted a material breach of the representations and warranties by 2430 Wisconsin Company in Sections 7.08 and 11.04 of the Contract.

37. 2430 Wisconsin Company and its general partners had knowledge of the 1991 Cleanup Action and the conditions related thereto before the execution of the Contract. As such, the breach by 2430 Wisconsin Company of its representations and warranties in Sections 7.08 and 11.04 of the Contract was willful and intentional.

38. If any such hazardous substance releases occurred on the 2424 Property, then as a direct and proximate result of the above-described breaches, WAP has suffered, and continues to suffer, material monetary damages.

WHEREFORE, WISCONSIN AVENUE PROPERTY, L.L.C. prays this Court enter judgment in favor of the fourth-party plaintiff and against the fourth-party defendants, 2430 WISCONSIN COMPANY, DANIEL STIEHR and DORIS STIEHR, and each of them, jointly and severally, as follows:

- A. For compensatory damages suffered by WAP as a result of the fourth-party defendants' breach of the representations and warranties in Sections 7.08 and 11.04 of the Contract;
- B. For punitive damages as a result of fourth-party defendants' willful and intentional breach of their representations and warranties in Sections 7.08 and 11.04 of the Contract;
- C. Awarding WAP its attorneys' fees and costs; and
- D. For such other and additional relief as the Court deems just and proper.

COUNT II
(Fraudulent Inducement)

39. WAP realleges each and every allegation pled in paragraphs 1 through 33 as paragraph 39 of this Count II.

40. As alleged with greater particularity above, 2430 Wisconsin Company had knowledge, before execution of the Contract, of the 1991 Cleanup Action.

41. The omission of 2430 Wisconsin Company to have disclosed the 1991 Cleanup Action to WAP or its nominee in the Contract or otherwise before the consummation of the purchase and sale transaction provided by the Contract was a material omission that was calculated to fraudulently induce WAP to enter into the Contract and acquire the 2424 Property.

42. As a direct and proximate result of such fraudulent inducement, WAP acquired the 2424 Property, without knowledge of the 1991 Cleanup Action.

43. As a direct and proximate result of such fraudulent inducement, WAP has suffered, and continues to suffer, material monetary damages.

WHEREFORE, WISCONSIN AVENUE PROPERTY, L.L.C. prays this Court enter judgment in favor of the fourth-party plaintiff and against the fourth-party defendants, the 2430 WISCONSIN COMPANY, DANIEL STIEHR and DORIS STIEHR, and each of them, jointly and severally, as follows:

- A. For compensatory damages suffered by WAP as a result of the fourth-party defendants' fraudulent inducement of WAP with respect to the Contract and consummation of the transactions contemplated thereby;
- B. For punitive damages as a result of fourth-party defendants' fraudulent inducement of WAP with respect to the Contract and the consummation of the transactions contemplated thereby;
- C. Awarding WAP its attorneys' fees and costs; and
- D. For such other and additional relief as the Court deems just and proper.

COUNT III
(Indemnity)

44. WAP realleges each and every allegation pled in paragraphs 1 through 33 as paragraph 44 of this Count III.

45. Pursuant to Section 16.03 of the Contract, 2430 Wisconsin Company agreed to indemnify and defend WAP from costs, claims and expenses, including attorneys' fees, arising out of any breach by 2430 Wisconsin Company of its obligations under the Contract.

46. Any breach of 2430 Wisconsin Company's representations and warranties in Sections 7.08 and 11.04 of the Contract constituted a breach of the Contract.

47. As alleged with greater particularity above, the breach by 2430 Wisconsin Company of its representations and warranties in Sections 7.08 and 11.04 of the Contract was willful and intentional.

48. 2430 Wisconsin Company has failed and refused to provide such indemnification and defense to WAP notwithstanding WAP's demand for such defense and indemnification.

WHEREFORE, WISCONSIN AVENUE PROPERTY, L.L.C. prays this Court enter judgment in favor of the fourth-party plaintiff and against the fourth-party defendants, 2430 WISCONSIN COMPANY, DANIEL STIEHR and DORIS STIEHR, and each of them, jointly and severally, as follows:

- A. Ordering and requiring the fourth-party defendants to indemnify and defend WAP from all liability arising from the breach by 2430 Wisconsin Company of its obligations under the Contract.
- B. For compensatory damages suffered by WAP as a result of the fourth-party defendants' breach of their obligations to indemnify and defend WAP from all

liability arising from the breach by 2430 Wisconsin Company of its obligations under the Contract;

- C. For punitive damages as a result of fourth-party defendants' willful and intentional breach of their obligations to indemnify and defend WAP from all liability arising from the breach by 2430 Wisconsin Company of its obligations under the Contract;
- D. Awarding WAP its attorneys' fees and costs; and
- E. For such other and additional relief as the Court deems just and proper.

**COUNT IV
(Illinois Joint Tortfeasor Contribution Act)**

49. WAP realleges each and every allegation pled in paragraphs 1 through 33 as paragraph 49 of this Count IV.

50. If releases of hazardous substances occurred on the 2424 Property during the time period in which the Land Trust held title to the 2424 Property (and in which 2430 Wisconsin Company was the beneficiary of the Land Trust), 2430 Wisconsin Company had a duty to the State not to allow hazardous substances to be released on 2424 Property. 2430 Wisconsin Company also had a duty to promptly respond to any releases of hazardous substances at the 2424 Property.

51. Any contamination at the 2424 Property that was caused by Bison's operations constitutes a breach of 2430 Wisconsin Company's duty and its negligent acts and omissions in connection with its ownership of the 2424 Property.

52. If WAP incurs any liability to any other parties as a result of any hazardous substances at or originating from the 2424 Property, then such liability is the direct and proximate result of 2430 Wisconsin Company's breach of its duty.

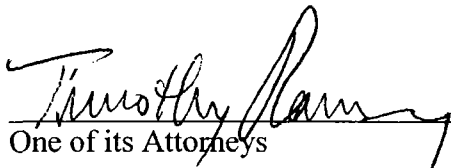
53. If it is found that any of the third-party plaintiffs, counterclaimants or cross-claimants in the State of Illinois Proceeding are entitled to recover any contribution from WAP pursuant to the State of Illinois Proceeding, then WAP is entitled to contribution from 2430 Wisconsin Company and its general partners including Daniel Stiehr and Doris Stiehr in an amount equivalent to their proportionate share of liability pursuant to the Illinois Joint Tortfeasor Contribution Act, 740 ILCS 100/1 *et seq.*

WHEREFORE, WISCONSIN AVENUE PROPERTY, L.L.C. prays that, in the event that it is found to be liable to any of the third party plaintiffs, counter-claimants or cross-claimants in the State of Illinois Proceeding, then WAP is entitled to a monetary contribution from 2430 Wisconsin Company and its general partners including David Stiehr and Doris Stiehr in an amount equal to their pro rata share of liability, as it may hereafter be calculated.

Respectfully submitted,

WISCONSIN AVENUE PROPERTY, L.L.C.

By:


One of its Attorneys

January 18, 2006

Timothy Ramsey
Jeffrey H. Bunn
Weinberg Richmond LLP
333 West Wacker Drive
Suite 1800
Chicago, Illinois 60606
312-807-3800

VERIFICATION

UNDER PENALTIES OF PERJURY provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned KENNETH MORENCY, Member of Wisconsin Avenue Property, LLC, an Illinois limited liability company, certifies that he has read the above and foregoing Fourth Party Complaint and that the facts contained therein are true and correct, except as to those matters stated to be on information and belief and, with respect thereto, he verily believes the same to be true.


KENNETH MORENCY

January 18, 2006